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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Information presented by the Northern Ireland Human Rights Commission*

Note by the Secretariat

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Annex

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Annex

[English only]

Contribution relating to the thematic report of the Special Rapporteur on the Promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity, Farida Shaheed

Information presented by the Northern Ireland Human Rights Commission on The Derry/Londonderry Report on Upholding the Human Right to Culture in Post-Conflict Societies

Foreword

The Northern Ireland Human Rights Commission (the Commission) is mandated as a national human rights institution to uphold all of the human rights in the international human rights treaties. These include the right to culture. However, the Commission has found that little attention has been paid to cultural rights in human rights discourse. In particular, the promotion and protection of cultural rights in societies emerging from conflict is a neglected area. Little guidance exists for States, cultural stakeholders and such human rights actors as national human rights institutions as to how best to uphold cultural rights in such contexts. This gap is of particular concern for the promotion of cultural rights in Northern Ireland, a society that is emerging from decades of conflict. It is in order to redress this gap in literature and policy guidance that the Commission is publishing the present report.

The report is set against the backdrop of the designation of Derry/Londonderry as UK City of Culture 2013. The experience of that city as City of Culture is used as a case study in relation to the realisation of cultural rights in a post-conflict society. As part of the UK City of Culture initiative, the Commission organised a conference and consultation on cultural rights in divided and post-conflict societies in association with the University of Ulster and in co-operation with the UN Special Rapporteur in the Field of Cultural Rights, Ms Farida Shaheed. This event took place in Derry/Londonderry from 1 to 3 July 2013 and the discussions that took placed informed the finalisation of the current report as well as the attached recommendations. (See Annex A for a full list of participants.)

The research for the report was led on behalf of the Commission by Dr Elizabeth Craig, with the contributions of Stratis-Andreas Efthymiou and Ciara O'Connell, all of the University of Sussex. The researchers and those who participated in the Derry/Londonderry meetings are owed the profound thanks of the Commission. We particularly appreciate the enthusiastic support and engagement on the part of the Special Rapporteur, Ms Shaheed.

The report concludes with a set of recommendations that are intended to contribute to the protection of cultural rights in post-conflict societies internationally.

We hope that you will find the Derry/Londonderry Report, with its conclusions and recommendations, to be of value in clarifying the content and the application of cultural rights in the context of societies emerging from conflict. We trust that the conclusions and

recommendations will be of assistance in guiding States and all human rights actors in charting a path that best honours these crucial human rights.

The former Chief Commissioner of the Northern Ireland Human Rights Commission, Professor Michael O'Flaherty, was the architect of this initiative and we are indebted to him for his insight and leadership in this innovative area.

John Corey

Interim Chair, Northern Ireland Human Rights Commission

January 2014

I. The International Legal Framework: Cultural Rights as Human Rights

1. Culture is understood for the purpose of this report as a 'shared system of meaning that people use to make sense of the world' that is expressed in a variety of different ways.[1] According to Ross, '[a]ttention to symbols, rituals and the narratives that members of a group use to make sense of the world is key to understanding how culture shapes their lives and their collective behaviours.'[2] It has furthermore been argued that participants of culture 'experience their traditions, stories, rituals and symbols, tools and material living conditions through shared, albeit contested and contestable, accounts.'[3] It is clear that in post-conflict and divided societies cultural expression can serve both as a marker of division and as a way of transcending difference.[4] This report therefore focuses in particular on the implementation of cultural rights in a way that either reinforces existing cultural narratives or that provides an opportunity for broadening understanding of what it means to speak of a right to culture.[5] The report considers cultural rights as a separate category of rights to those rights provisions dealing exclusively with education and minority and indigenous languages. Whilst it is clear that education, language and culture are inextricably connected, the focus of this report is on cultural rights as a category of rights that historically has been neglected by the international human rights community.

1.1 Cultural Rights in the International Bill of Rights

2. This section of the report focuses specifically on the right of everyone to participate in cultural life and the right of those belonging to minority groups to enjoy their own culture as universally recognised rights.

(a) Right to Participate in Cultural Life – Art 15 ICESCR

3. The most detailed elaboration of a human rights approach to 'culture' is found in the Committee on Economic, Social and Cultural Rights' General Comment on the Right of Everyone to Take Part in Cultural Life.[6] The view of culture adopted in the General Comment is one that is 'broad, inclusive… encompassing all manifestations of human existence. The expression "cultural life" is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.'[7] It stresses that culture should not be seen 'as a series of isolated manifestations or hermetic compartments, but as an interactive process, whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity.'[8] There is however no real reflection in the General Comment of the particular challenges

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[1] Marc Howard Ross, *Cultural Contestation in Ethnic Conflict* (Cambridge University Press 2007) 2, who draws upon Geertz's definition of culture as "an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and their attitudes toward life" (Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (Basic Books 1973) 89).

[2] Ibid.

[3] Seyla Behabib, The Claims of Culture: Equality, Diversity in the Global Era (Princeton University Press 2002) 5.

[4] Ross (2007) op. cit., 2.

[5] See generally Ross (2007), op. cit.

[6] Committee on Economic, Social and Cultural Rights: General Comment No. 21: Article 15(1)(a) The Right of Everyone to Take Part in Cultural Life (21 Dec. 2009) UN Doc. E/C.12/GC/21,

[7] Ibid., para. 11.

[8] Ibid., para. 12.

and threats in post-conflict and divided societies where there are often competing and contested cultural narratives.

4. As with other economic, social and cultural rights provisions, Article 15 confers specific legal obligations to respect, protect and fulfil the right in question with a focus on availability, accessibility, acceptability, adaptability and appropriateness. This requires non-interference with the exercise of cultural practices and access to cultural goods and services and steps to prevent third parties from interfering in the right. It also requires appropriate measures (whether legislative, administrative, judicial, budgetary, promotional or other) to ensure full realization of the right, including 'preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods.'[9]

5. The obligation to fulfill requires positive measures such as supporting public institutions and the cultural infrastructure for the implementation of policies aimed at protecting and promoting cultural diversity, granting financial and other assistance to relevant actors as well as '[t]asking appropriate measures to remedy structural forms of discrimination so as to ensure that the underrepresentation of persons from certain communities in public life does not adversely affect their right to take part in cultural life' and 'to create conditions conducive to constructive intercultural relationship between individuals and groups based on mutual respect, understanding and tolerance'.[10] It also requires measures from the State where individuals or communities are unable to realise the right for themselves[11] and to ensure appropriate education and public awareness concerning the right, particularly in relation to rural areas, areas of deprivation or in relation to the specific situation of minority groups.[12]

6. Meanwhile communities and cultural organisations are also recognised as having a role to play in promoting cultural rights and cooperating with the State.[13] This is particularly important in a post-conflict or divided society where the challenges of developing constructive intercultural relationships between individuals and groups are more evident. As with other economic, social and cultural rights, each State is required 'to take steps…to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized … by all appropriate means, including the adoption of legislative measures.'[14]

7. The right to access one's own culture, as well as that of others, is emphasised throughout the General Comment, as is both the individual and collective aspect. Key elements include the right to seek and develop cultural knowledge and expressions and to share them with others, the right to take part in creative activity, 'to know and understand his or her own culture and that of others'[15] and the right 'to be involved in creating the spiritual, material, intellectual and emotional expressions of the community. This is supported by the right to take part in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person's cultural rights.'[16] Meanwhile the State's 'minimum core obligations' are to take legislative and other necessary measures to guarantee non-discrimination and gender equality in the enjoyment of the right; respect for the right to self-identify and the right to change their choice; to respect and protect the right

[9] *Ibid.*, para. 6.
[10] Ibid., para. 58.
[11] Ibid., para. 54.
[12] Ibid., para. 53.
[13] Ibid., para. 74.
[14] International Covenant on Economic, Social and Cultural Rights 1966, Article 2(1).
[15] General Comment No. 21, op. cit., para. 15(b).
[16] Ibid., para. 15(c).

of everyone to engage in their own cultural rights while respecting human rights; eliminating barriers and obstacles that restrict access to a person's own culture or to other cultures and to allow and encourage the participation of members of different minority groups and communities in the design and implementation of law and policies that affect them.[17]

8. It is clear that the right to participate in cultural life requires that tangible cultural goods and services are *available* to all without discrimination. However, the General Comment makes it clear that intangibles such as 'languages, customs, traditions, beliefs, knowledge and history, as well as values which make up identity and contribute to the cultural diversity of individuals and communities' should also be available to all with particular emphasis placed on 'the productive intercultural kinship that arises where diverse groups, minorities and communities can freely share the same territory'.[18] In relation to *accessibility*, it is important that access should be provided and facilitated, covering individuals and communities in both urban and rural areas and be 'within physical and financial reach'.[19] However, of most significance for post-conflict societies are the requirements of *acceptability*, *adaptability* and *appropriateness*. Measures adopted require formulation and implementation 'in such a way as to be acceptable to the individuals and communities involved. In this regard, consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them'.[20] They should be flexible and relevant.[21] Finally, the General Comment stresses, in relation to appropriateness, that other human rights should be realised in a way that is 'pertinent and suitable to a given cultural modality or context' and 'respectful of the culture and cultural rights of individuals and communities, including minorities and indigenous communities.'[22]

9. To what extent are limits to the exercise of this right permissible, particularly in post-conflict situations? Here the standard qualification applies in that any limitations must be such 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.'[23] Furthermore the right should not be interpreted 'as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.'[24] The General Comment makes it clear that limitations might be necessary where there is a likelihood of infringement on other human rights but these 'must pursue a legitimate aim, be compatible with the nature of this right and be strictly necessary for the promotion of a general welfare in a democratic society'.[25] The General Comment also makes it clear that certain groups require special protection with regard to the realisation of cultural rights and that the requirement of non-discrimination requires that the 'most disadvantaged and marginalized individuals and groups can and indeed must be protected by the adoption of relatively low-costs targeted programme'.[26] Such groups include women and children, who play a particularly important

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17 *Ibid.*, para. 55.
18 *Ibid.*, para. 16(a).
19 *Ibid.*, para. 16(b).
20 *Ibid.*, para. 16(c).
21 *Ibid.*, para. 16(d).
22 *Ibid.*, para. 16(e).
23 ICESCR, Article 4..
24 *Ibid.*, Article 5.
25 General Comment No. 21, *op. cit.*, para. 15.
26 *Ibid.*, para. 23.

role as 'the bearers and transmitters of cultural values from generation to generation',[27] older persons, persons with disabilities and those living in poverty. Of particular importance in divided societies is the need to ensure the cultural rights and adequate participation in the cultural life of society of minorities and migrants with any programme of integration being based on 'inclusion, participation and non-discrimination, with a view to preserving the distinct character of minority cultures'.[28] This includes the right to hold cultural, artistic and intercultural events[29]

10. This right to participate in cultural life and the arts has also been addressed by the UN Committee on the Rights of the Child in its General Comment No. 17 (2013).[30] General Comment No. 17 recognises the importance of involvement in cultural life in contributing to a child's sense of belonging and in helping them 'discover and forge their own sense of identity and, in turn, contribute to the stimulation and sustainability of cultural life and traditional arts.'[31] Unusually, the General Comment specifically addresses conflict and post-conflict situations, recognising that cultural rights are often given low priority but stressing that they can have an important 'therapeutic and rehabilitative role'[32] and requiring positive measures from the State to encourage creative expression to promote healing in post-conflict situations.33

(b) Right to Enjoy One's Culture – Article 27 ICCPR

11. The right to enjoy one's own culture in Article 27 of the ICCPR is a right conferred on those belonging to ethnic, religious or linguistic minorities, the protection of which 'is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned thus enriching the fabric of society as a whole'.[34] During the drafting of Article 27, it had been noted that a negative formulation seemed to imply 'that the obligations of States would be limited to permitting the free exercise of the rights of minorities.'[35] However, Special Rapporteur Capotorti, in his report on Article 27 was of the view that 'the right granted to members of minority groups to enjoy their own culture would lose much of its meaning if no assistance from the Governments concerned was forthcoming'[36] and therefore concluded that the implementation of the rights in question did in fact call for 'active and sustained intervention by States.'[37]

12. Most of the individual communications considered by the HRC under Article 27 have concerned enjoyment of the right to culture amongst indigenous peoples (e.g. *Lovelace* v *Canada* (1981), *Chief Bernard Ominayak and the Lubicon Lake Band* v *Canada*

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27 *Ibid.*, para. 26.
28 *Ibid.*, para. 33.
29 *Ibid.*, para. 35.
30 Committee on the Rights of the Child: *General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts* (Art. 31), UN Doc. CRC/C/GC/17 (17 April 2013).
31 *Ibid.*, para. 11.
32 *Ibid.*, para. 53.
33 *Ibid.*, para. 57(e).
34 Human Rights Committee, *General Comment No. 23: The Rights of Minorities (Art. 27)* (4 August 1994) UN CCPR/C/21/Rev.1/Add. 5, para. 9.
35 Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (UN, New York, 1979) para. 212.
36 *Ibid.*, para 213.
37 *Ibid.*, para 217.

(1990), *Poma Poma* v *Peru* (2009)).[38] However, there are signs that this is changing[39] and cases linking minority languages and the right to culture include Mavlonov and Sa'di v Uzbekistan (2009),[40] which concerned the denial of a re-registration of a newspaper published almost exclusively in the Tajik language that was also distributed to schools. The HRC found a violation of Article 27 with Article 2 (on non-discrimination) stressing that 'education in a minority language is a fundamental part of minority culture' and concluding that 'the use of a minority language press as means of airing issues of significance and importance to the Tajik minority community in Uzbekistan, … is an essential element of the Tajik minority's culture.'[41]

13. The General Comment on Article 27 was adopted in 2004, five years earlier than the General Comment on the Right to Participate in Cultural Life. Whilst the focus is primarily on indigenous peoples, there are a few points that are worth noting – firstly, General Comment 27 clearly identifies the scope of application of Article 27 as covering migrant workers and visitors with no requirement of citizenship, nationality or permanent residence;[42] secondly it recognises that culture manifests itself in different forms and thirdly it emphasises that enjoyment of cultural rights 'may require positive measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.'[43]

*(c) Cultural Rights as Human Rights in Post-Conflict Societies14*1. Most of the recommendations made in relation to cultural rights in post-conflict States are not specifically related to the post-conflict situation. Sometimes this produces surprising results. For example, when the Committee on Economic, Social and Cultural Rights expressed concern about the cultural impact of the Ilisu dam construction project in Turkey, its primary focus was on forced evictions and it did not specifically mention Kurds amongst the people effected.[44] Where a post-conflict situation has been addressed specifically under Article 15, the emphasis is sometimes placed on the development of interculturalism rather than the cultural life of a minority community. For example, in relation to Kosovo, the Committee noted the deep ethnic divide, incidents of inter-ethnic violence and a climate of intolerance, recommending that the UN Interim Administration in Kosovo 'encourage the relevant Kosovo authorities to foster inter-cultural dialogue and tolerance through school education, community level projects and Kosovo-wide campaigns.'[45] The Committee has also noted concerns about the effect of massive migrations of

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[38] *Lovelace v. Canada,* Communication No. 24/1977: Canada, Human Rights Committee CCPR/C/13/D/24/1977 (30 July1981) concerning right of 'Maliseet Indian' to live on a reserve; *Chief Bernard Ominayak and the Lubicon Lake Band* v. *Canada,* Communication No. 167/1984: Canada., Human Rights Committee CCPR/C/38/D/167/1984 (10 May 1990) concerning exploitation of territory and *Poma Poma* v. *Peru,* Communication No 1457/2006: Peru., Human Rights Committee CCPR/C/95/D/1457/2006 (24 April 2009).

[39] For example, *Georgopoulos, Georgpoulou and their seven children v. Greece* Communication No. 1799/2008, Human Rights Committee CCPR/C/99/D/1799/2008 (14 Sept. 2010) (concerning a Roma family).

[40] *Rakhim Mavlonov and Shansiy Sa'di v. Uzbekistan*, Communication 1334/2004: Uzbekistan., CCPR/C/95/D/1334/2004 (29 April 2009).

[41] *Ibid.*, para. 8.7

[42] *op cit*, para. 5.2.

[43] *Ibid.*, para. 7.

[44] CESCR: Turkey, Concluding Observations of the Committee, 12 July 2011, UN Doc. E/C.12/TUR/CO.1, para. 26.

[45] CESCR: Serbia/Kosovo, Concluding Observations of the Committee, 1 December 2008, UN Doc E/C.12/UNK/CO/1, para. 32.

communities and groups from rural to urban areas on the preservation of their cultural heritage.[46] Meanwhile the Human Rights Committee has placed particular emphasis under Article 27 of the ICCPR on the rights of the Roma, where they are significantly represented in post-conflict societies (e.g. Bosnia and Herzegovina, 2012; Serbia, 2011 and Former Yugoslav Republic of Macedonia, 2008).[47] This is sometimes, but not always, in addition to consideration of participation and representation issues affecting other national minorities.[48] Non-recognition of minorities or indigenous peoples is also recognised as a particular problem (e.g. Rwanda and United Republic of Tanzania).[49] However, the focus generally tends to be on the idea of cultural rights as rights of everyone regardless of the group or community to which they belong, rather than specific adaptation to particular post-conflict situations.

1.2 Cultural Rights as an Integral Part of Minority Rights

14. Cultural rights feature prominently in minority rights instruments and therefore have an important role to play both in conflict prevention and in relation to post-conflict situations.[50]

15. There are a number of organisations involved in the developing minority rights framework, although common themes are merging.[51] Key instruments include the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (now OSCE) (the Copenhagen Document) of 29 June 1990, which contains a section (section IV) on questions relating to national minorities, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992 and the Council of Europe's Framework Convention for the Protection of National Minorities 1995. The minority rights framework provides particular insights into the role that cultural rights can play in a post-conflict society because of the history of its development alongside the re-emergence of ethnic tensions in Europe post 1989. This was evident already in the Copenhagen Document paragraph 30, which affirms 'that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.'[52] Many of the provisions in these instruments address education, language and non-discrimination/equality issues as well as issues relating to participation and cross-border contacts. Provisions specifically addressing cultural rights and obligations of the State in

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[46] CESCR: Angola, Concluding Observations of the Committee, 1 December 2008, UN Doc. E/C.12/AGO/CO/3, para. 40.

[47] HRC: Bosnia and Herzegovina, Concluding Observations, 13 November 2012, UN Doc. CCPR/C/BIH/CO/2, para. 21; Serbia, Concluding Observations, 20 May 2011, UN Doc. CCPR/C/SRB/CO/2, para. 22 and Former Yugoslav Republic of Macedonia, Concluding Observations, 17 April 2008, UN Doc. CCPR/C/MKD/CO/2, para. 19.

[48] HRC: Serbia, *op. cit.*, para. 23.

[49] HRC: Rwanda, Concluding Observations, 7 May 2009, UN Doc. CCPR/C/RWA/CO/3, para. 22 and United Republic of Tanzania, *op. cit.*, para. 26.

[50] See statement by Gay McDougal, UN Independent Expert on Minority Issues on the role of minority rights in conflict prevention to the 65th session of the UN General Assembly, 20 October 2010.

[51] These provide the focus of the first three thematic commentaries adopted by the Framework Convention (*See* www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Thematic_Intro_en.asp (*accessed* 16 May 2013) as well as the focus of the first thematic guidelines linked to the work of the HCNM www.osce.org/hcnm/43202 (*accessed* 17 May 2013)).

[52] *See also* Preambles to both the UN Minorities Declaration and the Framework Convention for the Protection of National Minorities.

relation to culture and to the promotion of 'a climate of mutual respect, understanding, co-operation and solidarity'[53] are also included.[54]

16. In regards to limitations, the Framework Convention makes it clear that those exercising any rights flowing from the principles therein must 'respect the national legislation and the rights of others', (Article 20) and that nothing therein 'shall be interpreted as implying any right to engage in any activity or perform any act contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States.'

17. Despite the historical context within which these provisions were developed, there are no specific references to post-conflict societies in either the Explanatory Report to the Framework Convention or in the Commentary on the UN Declaration, which was developed much later.[55] This is partly because of their position within the European and international human rights framework with the express recognition of minority rights and minority protection as 'an integral part of the international protection of human rights'.[56] The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as its title suggests, clearly covers a broad range of minority groups and, although the initial intention under the Framework Convention was to focus on the situation of 'national' or 'autochthonous' minorities within States, a number of States and the Framework Convention Advisory Committee have adopted a more inclusive approach in relation to the Framework Convention's scope of application.[57] Meanwhile the OSCE Ljubljana Guidelines on Integration of Diverse Societies adopt an even more inclusive approach, noting that: 'The term "national minority", as used in the Guidelines, refers to a wide range of minority groups, including ethnic, religious, linguistic and cultural communities, regardless of whether these groups are recognized as such by the States where they reside and irrespective of the designation applied to or claimed by them.'[58] The application of minority rights standards is therefore potentially much wider than envisaged during the drafting of these instruments.

18. The Advisory Committee created to monitor States' fulfilment of obligations under the Framework Convention is now well-established in its work.[59] Key themes identified from the Advisory Committee Opinions that are relevant to this report include a focus on representation in decision-making processes, the allocation of funds for cultural activities as well as discrimination and intercultural dialogue. The lack of funding for smaller groups

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[53] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, "Copenhagen Document," 26 January 1990, para. 36.

[54] E.g. paras. 32 and 33 of the Copenhagen Document, Arts. 1 and 2 of the UN Declaration and Arts. 5 and 6 of the Framework Convention.

[55] Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities(4 April 2005) UN Doc. E/CN.4/Sub.2/AC.5/2005/2.

[56] Council of Europe's Framework Convention for the Protection of National Minorities (1995) Article 1.

[57] Elizabeth Craig, *The Framework Convention for the Protection of National Minorities and the Development of a 'Generic' Approach to the Protection of Minority Rights in Europe?, 17* Int'l J. on Minority and Group Rts., 307-325 (2010).

[58] These were adopted by the High Commissioner on National Minorities (November 2012), *available at*www.osce.org/hcnm/96883, (*accessed* 17 May 2013) 4.

[59] *See* Elizabeth Craig, *From security to justice? The development of a more justice-oriented approach to the realisation of European minority rights standards, 30* Netherlands Q. of Hum. Rts. 1, 40-64 (2012) and *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities*, Marc Weller (ed.) (Oxford University Press, 2005) for detailed overview of the approach and significance of particular articles/provisions.

tends to be the focus of particular concern – e.g. concerns expressed in relation to funding of cultural activities for smaller groups such as Vlachs and Serbs in Macedonia (2011)[60] and groups not officially recognised as national minorities in Slovenia (2011).[61] In relation to good practice, the idea of a special fund for financing projects aimed at preserving and developing minority cultures has been welcomed, although delays in implementation have been criticised (Albania, 2011).[62] Meanwhile a range of cultural projects developed by Czech civil society (e.g. Babylon Fest and Colour Planet Festival) were welcomed in relation to the promotion of tolerance and combatting xenophobia in creative ways (Czech Republic, 2007).[63]

1.3 Cultural Rights and the UN Declaration on the Rights of Indigenous Peoples

19. Culture and cultural rights feature even more prominently in the UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly on 13 September 2007. The Declaration recognises that the right of indigenous peoples to self-determination includes the right to freely pursue their economic, social and cultural development (Article 3) and that indigenous peoples have the right to maintain and strengthen their own cultural institutions while retaining the right to participate fully in the cultural life of the State, if they so choose (Article 5). The right 'to practise and revitalize their cultural traditions and customs…includes the right to maintain, protect and develop the past, present and future manifestations of their cultures' (Article 11(1)). Indigenous cultural diversity should be adequately reflected in the media (Article 16) as well as in education and public information (Article 15). Meanwhile cultural heritage also features prominently, with Article 31 providing that:

'Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures…They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.'

20. Following the adoption of the UN Declaration on the Rights of Indigenous Peoples, the UN Committee on the Rights of the Child has drafted a General Comment on the rights of indigenous children under the UNCRC.[64] This recognises the close link between the exercise of cultural rights and the use of traditional territory and resources[65] and notes the particular vulnerability of indigenous children in situations of armed conflict or unrest, particularly when their areas of residence are rich in natural resources or attractive as a base for non-State armed groups.[66] In light of its subsequent observations about the importance of cultural rights for children in post-conflict societies,[67] it is clear that cultural rights issues

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[60] Advisory Committee on the Framework Convention for the Protection of National Minorities 'Third Opinion on the Former Yugoslav Republic of Macedonia' (30 March 2011) ACFC/OP/III(2011)001, para. 17.

[61] Advisory Committee on the Framework Convention for the Protection of National Minorities 'Third Opinion on Slovenia' (31 March 2011) ACFC/OP/III(2011)003, para. 20.

[62] Advisory Committee on the Framework Convention for the Protection of National Minorities 'Third Opinion on Albania' (23 November 2011) ACFC/OP/III(2011)009, paras. 26 & 83.

[63] Advisory Committee on the Framework Convention for the Protection of National Minorities 'Third Opinion on the Czech Republic (1 July 2011) ACFC/OP/III(2011)008, para. 70.

[64] CRC: *General Comment No. 11 Indigenous children and their rights under the Convention*, UN Doc. CRC/C/GC/11 (12 February 2009).

[65] *Ibid.*, para. 16.

[66] *Ibid.*, para. 64.

[67] See Pt I, 1(a) of this report.

need to be addressed from a child-friendly perspective and in a way that takes account both the views of children and their best interests, as required under Articles 12 and 3 UNCRC respectively.

1.4 Giving Effect to Cultural Rights Provisions in Post-Conflict Societies

21. States are given a considerable amount of discretion in how to effectively realise cultural rights in post-conflict societies, and State practice varies considerably. The cultural rights recognised in the International Bill of Rights, in particular the right to participate in cultural life and the right of minorities to enjoy their own culture, are considered to be capable of enforcement by individuals before a judicial or quasi-judicial body.[68] For example, both a right to participate in cultural life and a right similar to that found in Article 27 of the ICCPR were included in the South African Bill of Rights and are subject to the jurisdiction of the courts.[69] However, this is not a requirement under the International Human Rights Covenants.

22. Some States adopt a dualist approach to international law and require the incorporation of relevant provisions before they can be said to become part of national law. For example, the UK Human Rights Act 1998 incorporates ECHR rights into domestic law. Whilst the UK Human Rights Act does not contain a cultural or minority rights provision, the New Zealand Bill of Rights Act 1990 does, as it is aimed at incorporating rights in the ICCPR, rather than the ECHR, into domestic law. Other States adopt a monist approach to international law whereby directly applicable rights provisions automatically become part of national law when they enter into force. This would cover the cultural rights provisions in the International Bill of Rights but not the provisions of the Framework Convention. As explained in the Explanatory Report to the Framework Convention for the Protection of National Minorities (FCPNM)[70]:

- [A] framework Convention … contains mostly programme-type provisions setting out objectives which the Parties undertake to pursue. These provisions, which will not be directly applicable, leave the States concerned a measure of discretion in the implementation of the objectives which they have undertaken to achieve, thus enabling them to take particular circumstances into account.[71]
- The implementation of the principles set out in this framework Convention shall be done through national legislation and appropriate governmental policies …[72]

23. However, in many post-conflict societies specific references are made to minority rights instruments in constitutional bills of rights or in peace agreements. So, for example, both the Dayton Agreement (Bosnia and Herzegovina) and the Belfast Agreement (Northern Ireland) mention the Framework Convention specifically. However, as revealed in the earlier discussion, there is a range of ways to give effect to cultural rights other than through constitutional or legislative recognition.

24. The emphasis on effective participation and intercultural dialogue is common to the Council of Europe, the OSCE and the UN with detailed recommendations and examples of good practice provided in both the Lund Recommendations on the Effective Participation

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[68] *See* Optional Protocol to the ICCPR (1966) and Optional Protocol to the ICESCR (2008).

[69] *See* Elizabeth Craig, *A Right to Cultural Identity in a UK Bill of Rights?* 19 European Public Law 689-714, (2013), at 709-713.

[70] Explanatory Report to the Framework Convention for the Protection of National Minorities (opened for signature 1 February 1995, entered into force 1 February 1998) ETS 157.

[71] *Ibid.*, para 11.

[72] *Ibid.*, para 13.

of Minorities in Public Life[73] and the Framework Convention Advisory Committee's Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs.[74] More recently, the Ljubljana Guidelines on Integration of Diverse Societies aimed to set out recommendations for States, drawing particularly upon the High Commissioner on National Minorities' experiences in post-conflict societies and best international practice. It is therefore significant that they suggest going beyond the recognition and accommodation of 'minority culture, identity and political interests and promoting the participation of all', further elaborating policies and approaches aimed more at promoting integration and cohesion across ethnic divides.[75] Particularly in relation to cultural life, the Ljubljana Guidelines recommend that conditions should be created for effective participation for minorities not just in the cultural life of their own community but also that of wider society.[76]

25. Meanwhile other instruments developed outside the established human rights framework emphasise the responsibility of the State for ensuring that the space exists for cultural expressions to arise, and that the value of the cultural heritage of individuals and groups is also recognised.

II. Rights to Cultural Heritage and Diversity of Cultural Expression: Recent International Trends

26. The last two decades have witnessed an increased recognition within international organisations of the link between cultural expression and cultural heritage and the idea of cultural rights as 'an integral part of human rights.'[77] The position was succinctly summarised by Ms. Farida Shaheed, then the Independent Expert in the field of cultural rights in May 2011:

> *International and regional instruments concerning the preservation/safeguard of cultural heritage do not necessarily have a human rights approach. However, a striking shift has taken place in recent years from the preservation/safeguarding of cultural heritage as such, based on its outstanding value for humanity, to the protection of cultural heritage as being of crucial value for individuals and communities in relation to their own cultural identity. Generally speaking, the more recent the instrument, the stronger the link is with rights of individuals and communities.*[78]

27. The Council of Europe's Charter for Regional or Minority Languages 1992 is an example of the former and the Council of Europe's Framework Convention on the Value of Cultural Heritage for Society 2005 an example of the latter.

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[73] Lund Recommendations on the Effective Participation of Minorities in Public Life, Organization for Security and Co-operation in Europe (1 Sept.1999).

[74] Framework Convention Advisory Committee's Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs, Council of Europe, (5 May 2008) ACFC/31DOC(2008)001.

[75] The Ljubljana Guidelines on Integration of Diverse Societies, Organization for Security and Co-operation in Europe (Nov. 2012) 4.

[76] *Ibid.*, rec. 41.

[77] This idea was reaffirmed in UN Human Rights Council Resolution 10/23 establishing a new 'Independent expert in the field of cultural rights', 26 March 2009.

[78] Statement by Ms. Farida Shaheed, the Independent Expert in the field of cultural rights, to the Human Rights Council at its 17th session 31 May 2011.

28. These developments have contributed to a situation where there are increasing references not only to diversity of cultural expression, but also to rights to cultural heritage.[79]

2.1 Rights to Cultural Heritage

29. The Council of Europe's Framework Convention on the Value of Cultural Heritage for Society 2005, a key illustration of one of the more recent instruments referred to by the Independent Expert, explicitly recognises in Article 1(a) that 'rights relating to cultural heritage are inherent in the right to participate in cultural life as defined in the Universal Declaration of Human Rights.' It further recognises 'individual and collective responsibility towards cultural heritage' and 'that the conservation of cultural heritage and its sustainable use have human development and quality of life as their goal' (Article 1(b) and (c)). Article 4 stipulates that the exercise of the right to benefit from the cultural heritage and to contribute to its enrichment 'may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others.'

30. The Framework Convention came into force 1 June 2011 and has now been ratified by 15 States Parties. The definitions and principles agreed are particularly relevant to post-conflict situations, in particular Articles 2 and 3 which link cultural heritage to evolving ideas, principles and values.

Article 2 – Definitions

For the purposes of this Convention,

a cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time;

b a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations.

Article 3 –The common heritage of Europe

The Parties agree to promote an understanding of the common heritage of Europe, which consists of:

a. all forms of cultural heritage in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity, and

b. the ideals, principles and values, derived from the experience gained through progress and past conflicts, which foster the development of a peaceful and stable society, founded on respect for human rights, democracy and the rule of law.

31. As a framework convention the treaty 'sets out broad principles and areas for action rather than more specific obligations' with State undertakings relating to cultural heritage law and policies (Article 5), cultural heritage and dialogue (Article 7); environment,

[79] Report of the Special Rapporteur in the Field of Cultural Rights, Farida Shaheed, Mission to Saint Vincent and the Grenadines (5-9 November 2012), 22 April 2013, A/HRC/23/34/Add.2. *See also* Statement by Farida Shaheed, the Independent Expert in the field of Cultural Rights, to the Human Rights Council at its 17th session, 31 May 2011. Note also that access to cultural heritage was the particular focus of her attention in that year.

heritage and quality of life (Article 8); sustainable use of the cultural heritage (Article 9); cultural heritage and economic activity (Article 10); the organisation of public responsibilities for cultural heritage (Article 11); access to cultural heritage and democratic participation (Article 12); cultural heritage and knowledge (Article 13) and cultural heritage and the information society (Article 14),

2.2 Rights to Cultural Expression and Diversity

32. Key UNESCO instruments addressing rights to cultural expression and diversity include the Universal Declaration on Cultural Diversity 2001 and the UNESCO Convention on the Diversity of Cultural Expressions 2005. The former highlights the importance of cultural human rights in ensuring the flourishing of diversity (Article 5); the need to ensure access to means of expression and dissemination (Article 6); cultural heritage as 'the wellspring of creativity' (Article 7) and the need to recognise cultural goods and services 'as vectors of identity, values and meaning, which must not be treated as mere commodities or consumer goods (Article 8).' The goal of cultural policies should be not just to ensure 'the free circulation of ideas and works,' but also to 'create conditions conducive to the production and dissemination of diversified cultural goods and services through cultural industries that have the means to assert themselves at the local and global level' (Article 9).

33. It should be noted that objectives agreed by States Parties to the 2005 Convention that are of particular importance for the purpose of this report include: '(b) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner; (c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace and (d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples' (Article 1).

2.3 Rights to Cultural Heritage and Expression in Post-Conflict Societies

34. The emphasis on mutual interaction, interculturality and dialogue is of particular importance in post-conflict societies, where there is a need to reconcile the culture of the conflict with a developing culture of peace.80 This is addressed in the Preamble to the UN Declaration on a Culture of Peace (1999), which recognises 'that peace not only is the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation.' According to Article 8: 'A key role in the promotion of a culture of peace belongs to parents, teachers, politicians, journalists, religious bodies and groups, intellectuals, those engaged in scientific, philosophical and creative and artistic activities, health and humanitarian workers, social workers, managers at various levels as well as to non-governmental organizations.' It does therefore appear to be recognised that the involvement and engagement of a range of actors is required for a lasting culture of peace to develop.

35. The particular challenges presented in post-conflict societies has been recognised also in the recent work of the UN Special Rapporteur in the Field of Cultural Rights. For example, her recent report on the right to freedom of artistic expression and creativity notes that sometimes songs can encourage ethnic hatred and even on occasion 'have an

[80] On intercultural dialogue more generally, see Council of Europe White Paper on Intercultural Dialogue, *available at* www.coe.int/t/dg4/intercultural/source/white%20paper_final_revised_en.pdf (*accessed* 19 June 2013).

amplifying effect on genocide'.[81] The report further recognises that '[a]rtistic expression and creativity may entail the re-appropriation of symbols whether national (flags, national anthems), religious (figures, symbols, venues) or social/economical (a certain brand for example), as part of a response to the narratives promoted by States, religious institutions or economic powers.'[82] This is explored further in the next section of the report, which highlights some of the themes emerging from the relevant literature with a view to identifying some of the opportunities and challenges presented in protecting and promoting cultural rights in post-conflict societies.

III. Historical and Cultural Narratives in Post-Conflict Societies: Developing a More Inclusive Symbolic Landscape

36. It is recognised in the literature that cultural expression and the symbolic landscape in a post-conflict society can help foster peace and reconciliation as well as be a source of ongoing cultural contestation.[83] According to Ross, a symbolic landscape 'communicates social and political meanings through specific public images, physical objects and other expressive representations,'[84] which 'draw meaning from and give meaning to their surroundings.'[85] Whilst a symbolic landscape that excludes groups is perceived as 'an explicit form of denial and assertion of power',[86] a more inclusive symbolic landscape 'is a powerful expression of societal inclusion that communicates a mutuality and shared stake in society.'[87] Policies to transform symbolic landscape in nations that have experienced ethnic conflict therefore aim to correct cultural exclusion and discrimination.[88] The manner by which these policies are developed and carried out is in many ways more important for promoting peace than economic and political policies, although all three of these policies are deeply intertwined.[89]

37. There are various approaches to managing the role of culture in a post-conflict society, and symbolic landscapes can be developed using an integration or accommodation approach, or a combination of the two.[90] It has however been argued that the most successful means of fostering cultural acceptance and interculturalism in the context of

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[81] Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, *The right to freedom of artistic expression and creativity,* UN Doc. A/HRC./23/34 (14 March 2013) para. 33.

[82] *Ibid.*, para. 36, which references Svetlana Mincheva, "Symbols into soldiers: Art, censorship and religion", Background article for the Oslo Conference, p. 2.

[83] Marc Howard Ross, "Cultural Contestation and the Symbolic Landscape: Politics by Other Means," Chapter 1, *Culture and Belonging in Divided Societies: Contestation and Symbolic Landscapes*, MH Ross, ed. (University of Pennsylvania Press 2009) 1-24, 6 and Joanne McEvoy, "Managing Culture in Post-Conflict Societies," in *Contemporary Social Science: Journal of the Academy of Social Sciences*, Vol. 6(1), 2011, 55.

[84] Ross (2009) *op. cit.* 6.

[85] Derek H. Alderman and Joshua F.J. Inwood, "Landscapes of Memory and Socially Just Futures," Chapter 18, *The Wiley-Blackwell Companion to Cultural Geography*, Nuala C. Johnson, Richard H. Schein and Jamie Winders, eds.(Wiley-Blackwell 2013) 188.

[86] Ross (2009) *op. cit.*, 7.

[87] *Ibid.*

[88] Frances Stewart, *Policies Toward Horizontal Inequalities in Post-Conflict Reconstruction,* Centre for Research on Inequality, Human Security and Ethnicity, Working Paper No. 7, University of Oxford, 2005, 21. (*available at* www3.qeh.ox.ac.uk/pdf/crisewps/workingpaper7.pdf (*accessed* 29 October 2013).

[89] Ibid., p. 21..

[90] See McEvoy, *op. cit.* and also Sujit Choudhry (ed), *Constitutional Design for Divided Societies: Integration or Accommodation?* (Oxford University Press 2008).

reconciliation are those that seek to incorporate an inclusive accommodationist approach to include public recognition of diverse cultures.[91] An integration framework strives to develop a common public identity that does not find it entirely necessary to incorporate ethnic differences into the political structures of a society.[92] In this approach, the framework is optimistic about an accepted common identity, where cultures share a universal existence.[93] The accommodation framework understands that in many cases ethnic, cultural, linguistic and national identities are enduring, and not easily transformed.[94] This approach aims to adopt an inclusive strategy towards reconciliation where cultural identity is promoted in public and private spheres, whereas the integration framework runs the risk of being exclusive in nature and creating cultural marginalisation. An inclusive accommodationist strategy seeks to recognize the ethno-cultural diversity of a society, while also aiming to reduce the inequities cultural groups may face when attempting to access their cultural rights.[95]

38. The role of the State in the mobilisation of culture and the realisation of cultural rights in the public sphere would therefore appear particularly significant. The evidence presented in this report illustrates that cultural rights can serve as a divisive or reconciling mechanism according to cultural values, ideals and symbols mobilised through popular discourse. However, it also suggests that ongoing cultural contestation is inevitable and needs to be managed rather than eradicated. This section of the report aims to provide an insight into some of the challenges and opportunities that are encountered in transforming the symbolic landscape within societies that have experienced conflict. It does so by drawing upon historical and cultural narratives that accompany the protection and fulfilment of cultural rights, especially in regards to the inclusivity and accessibility of cultural goods, in post-conflict societies.

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[91] McEvoy, *op. cit.*

[92] Sujit Choudry, "Bridging comparative politics and comparative constitutional law: Constitutional design in divided societies," Chapter 1, *Constitutional Design for Divided Societies*, S. Choudry, ed.(Oxford University Press 2008) 3-40, 27.

[93] Ibid.

[94] J. McGarry, B. O'Leary and R. Simeon, "Integration or accommodation? The enduring debate in conflict regulation," Chapter 2, *Constitutional Design for Divided Societies*, S. Choudry, ed.(Oxford University Press 2008) 41-88, 52-53.

[95] *See* Cheryl de la Rey, "Reconciliation in Divided Societies," Chapter 21, *Peace, Conflict, and Violence: Peace Psychology for the 21st Century*, D.J. Christie, R.V. Wagner & D.A. Winter, eds.(I A Books 2001) 20.)

3.1 The Role of Cultural Symbols

39. Cultural symbols can take many forms: a flag, monument, museum, ceremony, memorial or even an emblem on a national sport's team jersey. Cultural symbols can be utilized to shift collective identities from those that are defensive, exclusive and sometimes divisive, to identities that are inclusive and empowering.[96] The use of more inclusive public symbols draws former opponents into new relationships, with a greater possibility to develop narratives that incorporate cultural differences, social practices, languages and norms and values.[97] Public symbols that are exclusive, meaning their intention is to recognize the narrative, culture or memory of a particular group or groups, have a much greater risk of shifting from a symbol of remembrance to one of cultural contestation, where different groups see the symbol as a means for expressing differences.[98] Monuments, memorials and other public cultural symbols have the "tendency to reflect and reinforce existing societal structures and notions of community, and to perpetuate commonly held images and stereotypes."[99] This means that developing new cultural symbols, which shift identities from defensive to empowered, aides in establishing a new notion of community, and helps to eradicate polarizing images and stereotypes that fuel discrimination. Cultural symbols can be used as tools to formulate a symbolic landscape that promotes unified and empowered collective identities.

40. Cultural identity is intrinsically linked to the historical narratives and memories of a community. In a post-conflict context the question of reconfiguring cultural identity, for example through altering or eliminating a cultural symbol, thus entering a process of cultural reconstruction with reconciliatory cultural identifications, in an effort to promote peace is a challenge. Often symbols are perceived as emblems of subordination, discrimination, segregation and violence by marginalized or minority groups during a conflict. However, when a group or groups' cultural identity is linked to the symbol as a means of cultural expression, eliminating the symbol after a conflict is akin to erasing a part of that group's cultural identity and the group's historical narrative. Conversely, a post-conflict symbol that is intentionally used to demarcate differences among groups, incite ethnic hatred, or reinforce the idea of one group as victor and the other as victim, brings issues of power and politics into play.[100] The challenge therefore is to design and develop more inclusive symbols that promote the common heritage and similarities of groups.

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[96] Lee Smithey, "Conflict, Transformation, Cultural Innovation, and Loyalist Identity in Northern Ireland," Chapter 5, *Culture and Belonging in Divided Societies: Contestation and Symbolic Landscapes*, Marc Howard Ross, ed.(University of Pennsylvania Press 2009) 85-106.

[97] Ross (2009) *op. cit*., 2.

[98] E.g. Dominic Bryan and Clifford Stevenson, "Flagging Peace: Struggles over Symbolic Landscape in the New Northern Ireland," Chapter 4, *Culture and Belonging in Divided Societies: Contestation and Symbolic Landscapes*, MH Ross, ed.(University of Pennsylvania Press 2009) 68-84, 73 on flags and emblems in Northern Ireland.

[99] Sabine Marschall, "Symbols of Reconciliation or Instruments of Division? A Critical look at New Monuments in South Africa," Chapter 8, *Culture and Belonging in Divided Societies: Contestation and Symbolic Landscapes*, Marc Howard Ross, ed.(University of Pennsylvania Press 2009) 151-175, 166.

[100] Judy Barsalou and Victoria Baxter, "The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice," United States Institute of Peace (January 2007) 4.

3.2 Participation

41. Post-conflict reconciliation projects that neglect to incorporate the effected community and cultural gatekeepers into the process of developing a transformed symbolic landscape have the potential to build resentment, instead of peace. This is because the members of a post-conflict society are the owners of the history, narratives, and memories of the conflict, and are therefore the best sources for understanding not only the conflict itself, but also what the society needs to heal itself. When such initiatives are developed in a "top-down" fashion there may be a disconnect between the project's original intention, and how it translates to local communities and within group identities.[101] Truth and reconciliation commissions and transitional justice projects have become increasingly aware of the necessity of including members of the community in the design of post-conflict projects that emphasize the recognition of all cultural identities.[102] Participation on behalf of the community is a fundamental element in the realisation of a symbolic landscape that is perceived as inclusive and relevant.

42. An example of good practice in this regard was the effort made by the Truth and Reconciliation Commission in Peru to reach out to the Quechua peoples. The Commission made an agreement with a well-known theatre group to go into the communities and use performance art to explain what the Commission was, how it worked, and its overall objectives to the people. [103] As part of its agreement with the Peruvian Truth and Reconciliation Commission, the Yuyachkani Theatre group's role was to serve as a mediator between the Commission and the indigenous communities, and as a channel to the Commission's public hearings. By using cultural expression to relate to the indigenous communities, the group was able to add personal experiences to a collective healing process that was inclusive of minority groups in Peru.[104] This collaboration between the Peruvian Truth and Reconciliation Commission and the Yuyachkani Theatre Group was effective for several reasons. First, the Yuyachkani Theatre Group was a social and cultural institution in Peru during the conflict, and had not simply been manufactured post-conflict by the Commission.[105] Second, the group had concerned itself with indigenous community issues long before its collaboration with the Commission. [106] Finally, the Commission's effort to disseminate a reconciliation message to marginalized communities was successful because it worked alongside a local cultural institution that had already been widely accepted by the Peruvian community. In this case, the Yuyachkani Theatre Group used performance arts and culture to bring a marginalized community into the post-conflict reconciliation process, and ultimately made it possible for the Quechua peoples' cultural identity to participate in the historical and cultural narrative of the conflict. This example highlights the importance of ensuring the inclusion and participation of existing cultural gate-keepers in new cultural and reconciliation initiatives.

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101 Marschall, *op. cit.*, 166.

102 E.g. Barsalou and Baxter, *op. cit.*, 13 in relation to South Africa. .

103 Francine Mary A'Ness, *Resisting Amnesia: Yuyachkani, Performance, and the Postwar Reconstruction of Peru*, 56 Theatre Journal 3, 395, 399 (2004),. *See also* Yuyachkani Theatre Group: Prior to working with the Commission, the group founded, " Teatro por lavida" which aimed to raise awareness about human rights abuses in Latin America, *See* http://hemisphericinstitute.org/cuaderno/yuyachkani/index.html (*accessed* 31 March 2013).

104 *Ibid.*, 397-399.

105 The Yuyachkani Theatre Group has been performing since 1971. *See* http://hemisphericinstitute.org/cuaderno/yuyachkani/group.html (*accessed* 31 March 2013).

106 A'Ness, *op. cit.* 399 and 401.

43. As these examples reveal, the relationship between cultural identity and the right to express and access culture is very much indivisible. Symbols are not only powerful, but they also represent how power is used within a society. Reconciliation processes that exist within a power struggle that is enforced by contested cultural symbols, will have great difficulty in achieving success without incorporating public participation, and also developing benefits for the community as a whole.

3.3 Improvement of Lives

44. In transforming the symbolic landscape of a society, cultural symbols such as "museums and monuments need to be linked to processes that seek to improve the daily socio-economic conditions" of members of the community.[107] In some cases, members of groups that experienced the greatest amount of hardship during a conflict do not appear to receive much benefit from the transformed post-conflict symbolic landscape with new cultural contestation sometimes emerging.

45. One example that has been cited in the literature relates to the establishment of a set of city development plans, called Skopje 2014, by the Macedonian government.[108] The Skopje 14 plan envisaged the building of 17 statues and 15 buildings in the city centre, including a statue of Alexander the Great, and was perceived by supporters of the project to be beneficial in consolidating Macedonia's national identity.[109] However, some ethnic Albanians perceived Skopje 2014 'to be a one-sided project with little to offer their community' and it has ultimately become a symbol of the identity crisis that faces the post-conflict nation.[110] The Macedonian government's "top-down" approach to developing a transformative symbolic landscape did not have the desired effect because it failed to equally benefit each of the groups that were party to the conflict. In essence, Skopje 14 became a source of cultural contestation, instead of cultural reconciliation.

46. Cultural tourism is also a factor to consider in how symbolic landscapes affect a post-conflict society.[111] The Kliptown Memorial in South Africa is a grand monument located in a very poor area where members of the community continue to struggle to survive. The memorial has become a symbol of dissatisfaction for the surrounding community because the revenue it generates as a tourist attraction is not being put back into the community, and therefore does not benefit the people that were most affected by the conflict.[112] In this case, the revenue's beneficiary is the cause of contention, because the people perceive the government as capitalising on the post-conflict symbolic landscape.

47. It would appear that the most effective way of ensuring that reconciliation-based monuments, memorials and museums and other cultural initiatives benefit the communities they represent is to involve each of the communities directly in the project's design and manufacture. The beneficiaries of a post-conflict society's symbolic landscape are directly related to the incorporation and participation of members from all cultural identities within the society in order to ensure the communities are represented equally, and also receive any

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[107] Ereshnee Naidu, "Symbolic Reparations: A fractured opportunity," Research report written for the Centre for the Study of Violence and Reconciliation (2004) 3.

[108] McEvoy, *op. cit.* 66.

[109] *Ibid. See* BalkanInsight.com (June 2010) "Critics lash 'dated' aesthetics of Skopje 14," (*Available at* www.balkaninsight.com/en/article/critics-lash-dated-aesthetics-of-skopje-2-an4 (*accessed* 31 March 2013))

[110] *Ibid.*, 66-67.

[111] "Cultural tourism: to create a discerning type of tourism that takes account of other people's cultures," UNESCO, "Culture," *available at* www.unesco.org/new/en/culture/themes/culture-and-development/cultural-tourism/ (*accessed* 31 March 2013).

[112] Barsalou and Baxter, *op. cit.*, 9.

monetary benefits that may arise from cultural tourism. The idea therefore is to foster inclusive cultural reconstruction through equal representation of communities in the process of decision-making and in the design of new cultural policy, initiatives and symbols.

3.4 Further Challenges for the Right to Culture in Post-Conflict Societies

48. The challenges that face societies in post-conflict reconciliation processes are centred around issues of cultural inclusivity, community participation and community benefits. Each of these aspects, when excluded from the society's symbolic landscape, has the capacity to compromise peace-building efforts, and ultimately can become a source of contestation rather than reconciliation. The challenge of developing a symbolic landscape that is entirely culturally inclusive is inherently connected to inclusive community participation in the creation of the landscape. Communities that exist outside of the dominant parties to the conflict are those that experience the most marginalization in the development of a post-conflict symbolic landscape. Identifying these groups and encouraging their participation allows their voices to be heard and to impact the development and design of the symbolic landscape in a way that is beneficial to the whole community. As cultural tourism increasingly plays a role in the construction of a society's post-conflict symbolic landscape, it is crucial that the effected communities participate in cultural projects rather than adopting a primarily top-down approach, which can be perceived by communities as potentially undermining their own cultural identity and historical narratives. This is demonstrated further in the next section, which focuses specifically on the designation of Derry/Londonderry as UK City of Culture 2013. This case-study reveals that the challenges posed by cultural rights in post-conflict societies can be found not just in efforts where exclusive initiatives lead to cultural contestation[113] but also at initiatives aimed at developing a more inclusive approach.

IV. Case-Study on Cultural Rights: The Derry/Londonderry City of Culture Initiative

4.1 Introduction

49. The designation of Derry/Londonderry as UK City of Culture 2013 is used here as a case-study to explore the opportunities and challenges presented by such a large-scale cultural initiative to the right to culture in a post-conflict society. The importance of the right to cultural expression (and to cultural heritage) of communities that have been involved in ethnic conflict through the effective implementation to the right to culture is central to the analysis that follows.

[113] E.g. Bryan and Stevenson in Ross 2009, *op. cit.*

50. Cultural contestation in Northern Ireland has already been the focus of considerable attention in the literature.[114] This recognises both the complexity of the local symbolic landscape[115] and the role of the peace process in intensifying 'symbolic contestation' as 'a principal means for the two sides to express their differences.'[116]

51. It is therefore perhaps unsurprising that progress on cultural rights has been slow, particularly in the legislative arena, with ongoing and unresolved debates over an Irish Language Act, a Bill of Rights which could potentially include cultural rights provisions (including the rights to cultural expression and to cultural heritage)[117] and over flags and parades, key markers of the symbolic landscape. A prominent example of this is the controversy that arose over the decision of Belfast City Council in December 2012 to fly the Union flag on certain designated days, which followed earlier legislative intervention applying to the devolved government and not to local council buildings.[118] There are of course numerous other examples with the Human Rights Act 1998, which incorporates the civil and political rights provisions in the ECHR into domestic law, on occasion drawing the courts as well as the legislature into such contestations. However, more inclusive symbols and shared spaces are also emerging,[119] with one prominent example being the new peace bridge in Derry/Londonderry linking the predominantly Catholic Cityside with the predominantly Protestant Waterside,[120] another of course being the City of Culture initiative itself.

4.2 Approach to the Research

52. Through the collection of qualitative data in the first quarter of the UK City of Culture 2013 the aim of this research was to explore the opportunities and challenges the designation of Derry/Londonderry as a post-conflict society has presented in relation to the realisation of cultural rights. Those interviewed during the course of the research included local artists, community representatives and cultural leaders as well as policy-makers associated with the Derry/Londonderry UK City of Culture 2013 initiative. The aim was not to provide a comprehensive evaluation of the City of Culture Initiative, but rather to provide a snapshot of opportunities and challenges identified at a very early stage in the process by a range of different cultural stakeholders. For this reason quotes from local artists and cultural leaders have been anonymised, unless identification is considered necessary for further contextualisation of the point being made. This part of the report was discussed during the meeting of experts at the symposium on Cultural Rights in Post-Conflict Societies, which was organised by the Northern Ireland Human Rights Commission and scheduled as part of the City of Culture programme in July. This event

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114 For example, Joanne McEvoy *op. cit., and* Ross (ed.) (2009) *Culture and Belonging in Divided Societies* Chs. 4 and 5, *op. cit.* and Ross (2007) *Culture Contestation in Ethnic Conflict* Ch. 4, *op. cit. op*

115 Bryan and Stevenson in Ross (2009) *op. cit.*, 69.

116 *Ibid.*, 73.

117 See NIHRC, A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland, 10 December 2008, available at http://www.nihrc.org/documents/bill%20of%20rights/bill-of-rights-for-northern-ireland-advice-to-secretary-state-2008.pdf (*accessed* 29 October 2013). For debates surrounding the inclusion of such rights in any future Northern Ireland or UK Bill of Rights, *see* Elizabeth Craig, *The Framework Convention for the Protection of National Minorities and the Northern Ireland Bill of Rights Process*, 60 Northern Ireland Legal Q. 201-11 (2009) and Elizabeth Craig, *A Right to Cultural Identity in a UK Bill of Rights?* 19 Eur. Pub. L., 689-714 (2013).

118 The Flags (Northern Ireland) Order 2000. On the flags issue generally, see Bryan and Stevenson in Ross (2009) *op. cit.*

119 Bryan and Stevenson in Ross (2009) *op. cit.*, 77-82.

120 On some of the cultural contestations that have arisen in Derry/Londonderry over the years and subsequent 'ritual definition,' *see* Ross (2007), *op. cit.*, 117-121.

can be linked to the goal of 'purposeful inquiry' and the discussion that took place informed both this section of the report as well as the subsequent recommendations.

4.3 The City of Culture Bid

53. The role of central, devolved and local government in the City of Culture bid is of course pivotal from an international human rights law perspective. The initiative for the Derry/Londonderry bid came from Derry City Council, the ILEX Urban Regeneration Company 'tasked with the promotion of the physical, economic and social regeneration' of the city and the Northern Ireland Strategic Investment Board.[121] It was recognised that 2013 was an important year for the city, with the marking of the 400th anniversary of the building of the city's historic walls. The launch of the UK City of Culture initiative therefore provided an ideal opportunity for a city with such a rich history, with the city's bid focusing in particular on the dual strands of 'joyous celebration' and 'purposeful inquiry'. Derry City Council is both the Licence Holder of the title and parent body of the Culture Company 2013 Ltd, which is an independent company (limited by guarantee) given the task of developing and delivering the cultural programme[122] and whose offices are symbolically based at the former Ebrington military barracks at the end of the new peace bridge. The initiative has involved significant revenue and capital investment in the city with key funders including the Department of Social Development (NI), the Department of Culture, Arts and Leisure (NI), ILEX, the local authority and other sources of public funding as well as private sponsorship and ticket sales.[123]

54. Whilst the UK City of Culture designation is administered centrally by the Department for Culture, Media and Sport, it was clear from the outset the successful bid would not secure central government funding. The link to regeneration and urban strategy planning was therefore emphasised from the beginning.[124] The vision was accordingly to develop a cultural programme which would connect local communities and be accessible to everyone and to deliver 'a significant transformational series of step changes' in local economic prosperity as well as equality, good relations and social cohesion.[125]

55. It is however the cultural aspect that is key for the purposes of this report, which considers first the opportunities and then the challenges to the realisation of cultural rights presented by the City of Culture initiative. It is clear that a post-conflict setting provides specific challenges in the application of cultural rights in ensuring acceptability in relation to the right to culture for different communities in a way that does not create further cultural insecurity and contestation. This was noted in an interview with officials from the Department of Culture, Arts and Leisure, who emphasised the importance of 'making sure everyone has their story told, and making sure everyone has their story told in a way that they are happy with, and that people don't feel any violence is done when their story is

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[121] Derry-Londonderry City of Culture 2013, 2nd ed., Culture Company 2-13, p. 122, *available at www.cityofculture2013.com/2013-programme* (*accessed* 22 June 2013).

[122] *See* Culture Company 2013, *available at* www.cityofculture2013.com/background/culture-company-2013/ (*accessed* 22 June 2013).

[123] *See* Derry-Londonderry 'City of Culture' bid document 'Our Bid,' *op. cit.* and programme, *op. cit.*, 123.

[124] This was indeed one of the requirements in the bidding guidelines – *See* Jonathan Vickery 'Reconsidering the Cultural City' in *It's Not the Winning: Reconsidering the Cultural City*, A Report on the Cultural Cities Research Network 2011-12, Kerry Wilson and David O'Brien, eds. (July 2012) 32-35.

[125] Other areas identified included 'the City's cultural offering; the opportunities available to our citizens and give expression to their talent; and the ability of our communities to creatively connect globally. ('Our Bid', *op. cit.*, 4).

being told', whilst also 'making sure that everyone has access to culture ...'[126] As was further indicated in this interview, not only is the expectation now that culture, arts and leisure will be used 'to combat poverty, fight social exclusion and help integrate people into our society more,' but also that there is a need 'to use culture, arts and leisure as ways of understanding who we are and telling [different] stories and learning but in a way almost to make sure it doesn't happen again ... to try to help us to move to a post-conflict situation.'

4.4 Realising the Right to Participate in Cultural Life: The Opportunities Presented by the City of Culture Programme

56. It will be recalled that the right to participate in cultural life requires availability, accessibility, acceptability and adaptability. Although only three months into the programme at the time of the initial writing of this report, it was clear that the slogan 'Culture for All' has been interpreted in a way that would appear to meet the requirements of availability and accessibility, providing a cultural space for all regardless of individual or group background and identity. In terms of accessibility, a clear commitment was made in the bid that 70% of cultural activity would be free at the point of delivery with another key component being the 'edge to centre' approach.[127] The aim of this approach was 'to bring those on the edge of the city's cultural life to the heart of it.'[128] The commitment on pricing was therefore always going to have a significant impact in relation to making culture accessible to different socio-economic groups with the 'edge to centre' approach ensuring accessibility to those living on the geographical edge and allowing cultural expression amongst individuals and groups in areas of high deprivation. According to an officer of Derry City Council, the intention behind this approach was 'to make sure that cultural activity went into neighbourhoods' with a component of the budget allocated to the neighbourhoods to design their own cultural programme. Meanwhile the City of Culture programme facilitates acceptability and adaptability by making grants available to individuals, voluntary/community organisations and statutory organisations for their own events and initiatives.[129] Many individual organisations representing local culture and heritage have benefitted from this, although given the timeframe in question it was perhaps inevitable that issues relating to the distribution of funding and the processing of applications would arise.

57. The range and quality of events within the programme is impressive and, on the face of it the programme does indeed appear to have something for everyone. In terms of the groups recognised as requiring special protection by the International Committee on Economic, Social and Cultural Rights, it was the emphasis on children and young people that was particularly evident from the interviews conducted during the course of the research with a number of references made to educational initiatives and to the Children's Music Promise Programme. There has also been considerable focus on higher-end cultural activity, which ensures the accessibility and availability of cultural excellence. There are two lead senior programmers within the Culture Company 2013, as described by the Chief Executive of the Culture Company: one of the programmers was to 'bring the major national, international projects... wow factor stuff' (eg . Hofesh Shechter, the Turner Prize,

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[126] For an earlier manifestation of this, see documents preceding the adoption of the Museums Policy, *available at* www.dcalni.gov.uk/index/museums-r08-2/museums-r08.htm (22 June 2013).

[127] 'Our Bid,' *op. cit.*

[128] 2013 Communities Programme: Consulting Local Communities,' *available at* www.shiftyparadigms.org/images/Misguided_Loyalties/Engaging_Communities_Strategy_2013.doc (*accessed* 22 June 2013).

[129] *See* City of Culture Funding Opportunities, *available at* www.cityofculture2013.com/funding-opportunities/ (*accessed* 22 June 2013).

the National Ballet, the London Symphony Orchestra, Haris Pašović), the other was appointed as head of the Education and Communities programme with a concerted effort to ensure that the national and international projects were also used to connect with local people and communities.[130] Particular emphasis has been placed in particular on the development of local and emerging cultural leaders, particular amongst the younger generation.

58. In post-conflict societies there are particular challenges in ensuring acceptability in relation to cultural rights, as will be discussed later in this report. The inclusion in the programme of events focused specifically on the city's history and the culture of both main communities was therefore crucial. Such events include the Plantation: The Irish and Ulster Scots Experience project, the Nelson Drive Estate 50th Anniversary initiative aimed at 'raising awareness of Protestant culture and traditions' and Scéal na Gaelige: The Story of Irish, intended to tell the story of Irish and of its speakers in the City. Meanwhile, the Peace Process project and Picturing Derry, a photographic exhibition relating to the conflict, are examples of initiatives that acknowledge the role of the conflict and of the peace process in the city's history.[131] Other events and initiatives referred to in the interviews conducted included the Return of Colmcille 'The Peace Maker' pageant,[132] the Ebrington Tattoo[133] and debates around purposeful enquiry being led by the Culture Company and the Holywell trust.[134] At the time of the conducting of this research, it was too early to tell how successful the translation of the ideal of purposive inquiry would be in practice, although there were some promising signs[135] and of course this report itself forms part of this strand. It is clear nonetheless that such initiatives can be closely linked to the goal of promoting mutual understanding, dialogue and acceptance between groups as required by international human rights standards and have an important role to play.

4.5 Challenges to the Realisation of Cultural Rights

(a) Engaging Local Cultural Leaders and Gatekeepers

59. A lot of work has been undertaken within the context of the City of Culture initiative to ensure the engagement and involvement of local cultural leaders and gatekeepers with some cultural communities embracing the opportunity to showcase their culture.[136] Despite such efforts, and the opportunities for local cultural leaders and community representatives to apply for funding to support their own cultural events and initiatives, a number of interviewees reported a sense of disengagement from the process. The problem appeared to be in early perceptions of the type of culture represented by the event, illustrating the

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130 The example given in that interview was the Hofesh Schecter Theatre Company working with 30 young musicians and 150 young dancers from across the city.

131 For details of these and other events, *see* the City of Culture programme, *op. cit.*

132 The Return of Colmcille "The Peace Maker," *available at* www.cityofculture2013.com/event/the-return-of-colm-cille/ (*accessed* 22 June 2013). According to Mr Ó hOisín, MLA: 'We have identified shared and Christian history, such as the legacy of Colmcille, and an appreciation of a shared tradition, not only locally, but along the north-west and north coasts of Ireland, the west coast of Scotland and elsewhere.' (Northern Ireland Assembly Debates, Hansard, Vol 84, No 5, 29 April 2013) 3.

133 *See* The Walled City Tattoo, *available at* www.cityofculture2013.com/event/the-walled-city-tattoo/ (*accessed* 22 June 2013)

134 *See* Hollywell Trust, *available at* www.holywelltrust.com/ (*accessed* 22 June 2013).

135 For an early discussion of this, see debate on *Private Members' Business, Londonderry and the North-west 1613-2013*, Northern Ireland Assembly Debates, Hansard, Vol. 84, No 5, 29 April 2013, 1-15 .

136 *See*'2013 Communities Programme: Consulting Local Communities,'*op. cit.*

particular challenges of establishing any new cultural initiative in a post-conflict setting where local cultural leaders and artists consider their own forms of cultural expression or production and associated cultural rights to be at risk or under threat.[137] This reflected in the following assessment of the City of Culture by one of the interviewees: 'it's almost as if we'd been given a blank canvas, but the City of Culture is not about blank canvases… like I said. The City of Culture is reflective of what already exists and opening that up to the world. Not bringing in the circus for a period of time and then moving it on to somewhere else.'

60. Of course one of the reasons for this perception was that the City of Culture initiative is regarded by many as an opportunity to move beyond the dominant narratives and divisions of the past, as reflected in the following quote from the Chief Executive of the Culture Company:

> *You know, every Protestant in this city is not sitting waiting saying where are the pipes and drums? And where's the Ulster Scots and every Catholic or Nationalist is not sitting waiting saying is there Fleadh in it? Is there Irish language in it? It's just trying to lift people out of those standard stereotypes and create a programme that has just good things and if it's something that's in the Irish language or to do with pipes and drums and it's quality, and it's exceptional for the year then it's in our programme.*

61. However, what the interviews conducted revealed is that for some this is indeed the reality. This suggests that more proactive efforts may be required to reach out to those cultural leaders and gate-keepers who consider that their own cultural heritage and forms of cultural expression are perhaps threatened. The engagement of such individuals would appear to be particularly important in post-conflict societies where cultural contestation can quickly lead to a deterioration of relations between groups and an increase in tensions.

62. It was noted above that one of the additional challenges to the realisation of the right to culture in post-conflict societies relates to the position of 'the Other,' i.e. those who do not belong to one of the main communities associated with the conflict. This was also reinforced during the course of the research. As articulated by one of those interviewed, 'in terms of cultural rights, everything here has been bogged down in the mainstream conflict.' A particular problem for such communities in Northern Ireland is the issue of representation, particularly given a long history of marginalisation, as revealed in the following quote from the same representative: 'No, absolutely there are loads communities which are not represented in an organised way.' There is therefore a clear need to help contribute to capacity building so groups can represent themselves in a more meaningful and effective way.

63. Whilst central and local government support is clearly vital in ensuring the legacy of City of Culture 2013, it is submitted that local cultural leaders and gate-keepers also have important roles to play. It is central to highlight here that cultural leaders and gatekeepers can have significant influence over their communities and that adequate local community representation is therefore key. It is clear from the following quote from the Chief Executive of the Culture Company that one of the aspects of the legacy will be the emergence of new cultural leaders: 'One of the biggest legacies is going to be a group of people who have had the most incredible experience, a most challenging experience, but the kind of cultural leadership that that will leave here is an enormous legacy.' However, it is

[137] Some interviewees noted that they had not been asked to be involved in the initiative, and one also mentioned in this regard the list of cultural champions on the City of Culture website, www.cityofculture2013.com/champions/ (*accessed* 22 June 2013).

crucial in a post-conflict society that existing cultural leaders are not thereby marginalised in the process, and that there is also space for the development of cultural leadership within those communities that have traditionally lacked representation or where cultural gatekeepers have tended to dominate at the expense of local communities.

(b) The (Re)emergence of Underlying Cultural Contestation

64. The potential marginalisation or exclusion of local cultural leaders is not however the only challenge to the realisation of cultural rights in post-conflict societies, so too is the potential for divisive cultural elements to arise. As revealed by tensions that have arisen in relation to the title of the designation itself and to specific events, it is clear that the launch of any new cultural platform in a post-conflict society inevitably allows space for underlying cultural contestations intrinsically linked to the conflict to re-emerge.[138] This is supported by the following quote from one of the interviewees: '[Y]ou cannot take the politics out of this. This is my point. The politics cannot be taken out of this, even though it is being presented as culture and a cultural event and so on and so forth, you cannot remove the politics.'

65. The tensions associated with the naming of the city as either Derry or Londonderry and with the identification of the city as either an Irish or British city have been well-documented.[139] It is not therefore surprising that the decision to make a bid for the UK City of Culture title, and the subsequent dropping of the UK from some of the publicity materials, led to further contestation. This was repeatedly mentioned in interviews with local cultural stakeholders with the challenge presented clearly articulated in the following quote: 'Yeah, they've airbrushed out the UK, which has upset some of the Unionist community, actually upset all of the Unionist community. But, the fact is they have airbrushed it out to make it more palatable for the Catholic Nationalist community.' A similar point was raised in another interview: 'Well, that's been one of the ways to drag Nationalists into it. And that's why Sinn Féin are more comfortable about it when they're talking about the City of Culture rather than the UK City of Culture. That hasn't gone unnoticed by the Protestant community. They are very clear that it is the UK City of Culture. But, they're feeling excluded from it now, because the UK has been left out of it, has been removed from it. '

66. The bringing of the All Ireland Fleadh Cheoil na hÉireann [140] to the city also appears to have caused some concern amongst the Protestant or Unionist community, both in relation to the presentation of the city as an 'Irish city' and in relation to funding. This is revealed in the following quote from a representative of the Apprentice Boys, a long established cultural organisation in the city associated in particular with Protestant or British culture.[141] 'You can argue about the Fleadh in terms of traditional music etc., … but the significant thing is that the Fleadh has never been here. Whereas from our point of view we are here, we love, breathe it…. 365 days a year, every year. Whereas this is imported for the UK City of Culture, what legacy it leaves I don't know.' This concern was reinforced by another of our interviewees who revealed his predication, that 'it will be a big cultural Nationalist, Republican, Catholic event rather than an inclusive event. There'll be musicians coming in from international, there'll be Americans, there'll be Europeans, there'll be Germans, I'd say there'll be French, there'll be a lot of people coming from all

[138] *See also* McEvoy, *op. cit.*, in relation to the Former Yugoslav Republic of Macedonia.
[139] Ross (2007) *op. cit.*, 117-121.
[140] An annual celebration of Irish culture and music, *see* www.fleadhcheoil.ie (*accessed* 22 June 2013).
[141] *See* Apprentice Boys of Derry, *available at* www.apprenticeboys.co.uk (*accessed* 22 June 2013).

over the world for it… The Protestant community will feel excluded again…if it's going to be divisive, that's the one that will be most divisive.'

67. What this and other examples[142] reveal is the inevitability that such cultural contestation will arise and that there is the need for sufficient space to be allocated to allow for discussion and dialogue. It appears that this was recognised also by those involved in initiating the bid, as indicated by an officer of Derry City Council: 'And you know there was this debate; were we the UK City of Culture, were we the City of Culture, were we Derry, were we Londonderry, were we Doire? So that debate has been very healthy. It has been played out a lot in the media, and the media has been having conversations in relation to it. It's been happening within communities, people having conversations.' This also involves to some extent reconciling with the past and developing a new story or narrative. The key point to be made here is that such contestation is to be expected and that the ensuing narrative, dialogue and debate can be a useful part of the reconciliation process.

4.6 Developing a New Story

> *So we said rather than focus on one identity and being recognised for a green or an orange bid this was what culture meant to an individual so we said whenever we refer to being creative and ambitious and being connected that was about individuals, this was their chance to unleash a completely new transformation of themselves, of the city and how then we could tell the world a new story.*

68. These words from an officer of Derry City Council reveal a vision of moving forward and developing a new narrative and story for the city. With an increasing number of people in Northern Ireland identifying themselves as Northern Irish or 'Other', the City of Culture initiative is clearly filling demand for a new story or narrative. However, it appeared from the interviews conducted during the course of this research that there are concerns amongst existing cultural leaders and gate-keepers that their rights to cultural heritage and cultural expression are not neglected in the process. The trauma of every post-conflict situation is an inheritance that belongs to the communities involved and the need to express and deal with these traumas, was clearly articulated in these accounts. This clearly is an area where cultural expression has a key role to play. As articulated by the Bogside Artists[143] in relation to their own work and the People's Gallery: 'Whereas our work is saying look we must move on, but to do so we must examine, we have to look, we have to observe and we have to learn. There's nothing frightening in our murals we're simply saying look this happened.'

69. The continued segregation of the two main communities in Northern Ireland, most notably in housing and education, have been noted in particular by international human rights treaty monitoring bodies and there remains a need for greater interaction and sharing of culture not just between the two main communities, but also with the 'other'.[144] For example, the Director of the Peace and Reconciliation Group[145] stated his opinion in relation to the City of Culture initiative: 'I would like to see it be more inclusive, I would

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[142] Although not discussed in depth here, an example referred to in many of our interviews was that of the Sons and Daughters launch concert, which coincided with the protests over the flying of the Union flag referred to earlier and a statement made by one of the artists which it was considered by some to have had the effect of marginalising the Protestant/Unionist community.

[143] The Bogside is a nationalist area of the city. For information about the Bogside Artists and their work, *see* wwww.bogsideartists.com (*accessed* 22 June 2013).

[144] *See* Part IV, Sec. 2 of the full length version of this report.

[145] For further information about the work of the Peace and Reconciliation Group, *see* *http://www.peaceprg.co.uk/* (*accessed* 22 June 2013).

like to see the AOH[146] and the Apprentice Boys coming together.' The representative of the Black and Minority Ethnic communities further substantiates this point: 'what we're looking for is a culture change really …not overnight by any means, but engagement with the "other." And I'm afraid to say it's not happening. It's not happening with the main "other" and it's certainly not happening with the lesser "other."' This final quote reveals a key component in the telling of a new story for the city which, while acknowledging the changing demographics, also recognises the need to continue to address the trauma of the past and to encourage more meaningful engagement and inclusivity between groups. This is to be seen as part of the broader attempt to create more meaningful engagement between groups that holds the potential to lead not only to integration but ultimately to real reconciliation. This is required both to ensure the protection of a group's own culture and to develop knowledge of other cultures, which is necessary both for the development of future cohesion in a post-conflict society and for the realisation of cultural rights in a more meaningful sense. The emphasis on purposeful inquiry in the City of Culture programme therefore would appear to have a particularly important role to play in this regard.

4.7 Conclusion: Looking Beyond 2013

70. This large-scale initiative appears to have had considerable success in ensuring the accessibility and availability of culture for all, although there are concerns about what will happen post-2013 without further central government support, particularly in light of increased expectations from the local population.[147] However, Derry/Londonderry will surely benefit from the investment in the development of cultural excellence and in emerging cultural leaders for some years to come. This report has revealed that cultural identity, heritage and expression, coupled with effective participation processes, are fundamental elements in establishing a symbolic landscape in a post-conflict society that is not only representative of all members of the society, but that also improves it. In the launch of a new cultural platform in any post-conflict society, it is clear that sufficient space needs to be allowed for local culture, which includes competing cultural narratives, to emerge. This is important not only in terms of meeting the developing requirements in relation to cultural rights under international human rights law but also in light of the particular challenges that a post-conflict situation presents for the realisation of such rights. The challenges that have arisen reflect issues of cultural contestation that will inevitably arise or occur in any post-conflict setting and the main challenge would appear to be to manage such contestation in a way that ensures a right to participate in cultural life which encompasses rights to cultural heritage and expression for all individuals and communities.

Postscript

71. The Maiden City Festival, linked to the Apprentice Boys' largest annual parade, was held from 3-10 August 2013,[148] and was followed by the All-Ireland Fleadh, which was held in the city from 11-18 August 2013.[149] Both were supported by the Culture Company as part of the City of Culture initiative, with considerable efforts made to make both events

[146] Ancient Order of Hibernians, an Irish Catholic Fraternal organisation.

[147] One of the concerns expressed by the officer of Derry City Council was that it 'will be a very successful year and the expectation from the community is that they will want to extend this beyond and unless we get the central government support it will be very difficult to sustain a lot of the activity.'

[148] For information on this year's programme, *see* www.maidencityfestival.com/programme/2013-maiden-city-festival-ready-to-go/ (*accessed* 5 August 2013).

[149] For details of the 2013 programe, *see* www.2013fleadh.ie (*accessed* 5 August 2013).

as inclusive as possible.[150] Despite the criticisms and the challenges, including those of a financial nature,[151] it is clear that the City of Culture has provided a unique opportunity for the city and for the showcasing and celebration of local culture, with the creation of new spaces for the sharing of cultural expression and heritage.

V. The Derry/Londonderry Conclusions and Recommendations on Upholding the Human Right to Culture in Post-Conflict Societies

72. The present report was discussed at an expert meeting that took place in Derry/Londonderry, Northern Ireland, on 2-3 July 2013. The participants of the meeting are listed at Annex A. Following the meeting, and taking account of the commentary, the Northern Ireland Human Rights Commission has adopted the report and it puts forward the following conclusion/recommendations. While many of these recommendations have generic significance, they are intended primarily in the context of the honouring of cultural rights in societies emerging from conflict. All of the conclusions and recommendations are predicated on the view that respect for those cultural human rights that are found in the international and regional human rights treaties is integral to the making and consolidation of peace in societies emerging from conflict.

- This inexorable relationship of the respect for cultural rights and of peace needs to be better acknowledged and addressed by all stakeholders in peace-making and peace-building processes, including parties in conflict (both of a State and non-State character), negotiators, specialist UN and regional agencies and relevant civil society actors.
- Respect for cultural human rights should be integrated in peace agreements, related constitutional settlements, such as bills of rights and other related frameworks. Commitments to protect cultural rights should extend to the ratification of relevant regional and international human rights instruments.
- It is important that cultural stakeholders participate in peace negotiations and in peace-implementation and peace-oversight bodies.
- Respect for cultural rights needs to be integrated in all stages of peace-building with recognition that it is necessary for the resolution of concerns regarding peace, security and justice. Promotion of cultural rights and redress of violations of cultural rights should be an important part of any transitional justice programme.
- Actors at the national and international levels with responsibility for upholding human rights need to recognise the importance of championing cultural rights in societies emerging from conflict. Such actors include, at the national level, national human rights institutions and human rights civil society, and, internationally, human rights treaty monitoring bodies, the UN High Commissioner for Human Rights, the United Nations Human Rights Council and its Special Procedures and the UN Peace-building Council.

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[150] For example, a number of bands and Protestant or Unionist organisations participated in the Fleadh with a subcommittee set up specifically focused on engagement of these communities . See UK City of Culture 2013: Derry City Council/Culture Company Briefing to Committee for Social Development (NI), Official Report Hansard 2012/13, Tuesday 06 June 2013 for reflections on this as well as other developments and initiatives at the mid-way point.

[151] *Ibid.*

- The UN Human Rights Treaty Bodies should better integrate post-conflict contexts into their understanding and application of cultural rights. In particular, the Human Rights Committee should update its General Comment 23 of 2004 to better address such contexts, and the Committee on Economic, Social and Cultural Rights should consider the adoption of an annex to General Comment 27 on the application of article 15 of the International Covenant on Economic, Social and Cultural Rights in post-conflict contexts.
- Cultural rights extend to a right of access to and the enjoyment of cultural heritage.
- Cultural rights belong to all persons without discrimination, including to members of non-dominant or otherwise culturally excluded or overlooked communities.
- The upholding of cultural rights will only be meaningful if it integrates close and on-going participation of the holders of human rights and in particular of those individuals and communities whose cultural rights are at most risk. Such participation has value in its own right and not just for purposes of achieving other public purposes.
- Participation, to be meaningful, must ensure the engagement and views of community residents and cultural stakeholders; it must ensure that the voices that are heard are not just those of "cultural gatekeepers" but that they also include emerging cultural leaders.
- It is imperative that participation embrace the involvement and views of children and young people.
- The upholding of cultural rights in complex or divided societies requires that a cultural accommodation framework be put in place that acknowledges the inevitability of cultural contestation, that facilitates cultural exchanges across communities and that supports the simultaneous thriving of diverse and distinct cultures.
- For diverse and distinct cultures to thrive it is necessary that a regulatory framework be put in place that ensures non-discriminatory access to resources.
- The upholding of cultural rights in post-conflict contexts requires adequate funding support that is sufficiently sustained to support meaningful progressive realisation of cultural rights.
- Cultural rights are not absolute rights and the state has the responsibility to regulate cultural expression so that it does not serve to violate the human rights of any person.
- Internationally, there is much good practice regarding the upholding of cultural rights in societies emerging from conflict. It is important that that such good practice be identified and widely disseminated.
- Such designations as a "city of culture", whether at national, regional or international levels, can play an important part on drawing attention to both good practice and the complexity of respecting cultural rights. As happened in the case of Derry/Londonderry, it is very valuable to award such designation to cities emerging from conflict.